

(1926) 04 AHC CK 0010
In the Allahabad High Court

Debi Chand

APPELLANT

Vs

Parbhu Lal and Others

RESPONDENT

Date of Decision : 26-04-1926

Acts Referred:

Citation : (1926) 04 AHC CK 0010

Hon'ble Judges : Kanhaiya Lal, J; Ashworth, J

Bench : Division Bench

Judgement

Ashworth, J.—This second appeal arises out of a suit brought by the plaintiff, Debi Chand, for rendition of partnership accounts, and there are cross objections filed by Respondent No. 1, Parbhu Lal, one partner, and by Respondents Nos. 2 and 3, Chaman Lal and Paras Ram. The ground taken in the plaintiff's appeal is that no final decree should have been pronounced in this case inasmuch as he, the plaintiff, after the framing of a preliminary decree, withdrew his suit for rendition of accounts. This ground we cannot accept. When once there has been a preliminary decree ordering the taking of accounts, if the plaintiff desires to withdraw his original claim for rendition but the defendant desires the case to proceed, the proper course is to transpose the plaintiff to the position of defendant and make the defendant plaintiff. We may refer to the decision of Surampalli Ramamurthi v. Surampali Reddy AIR 1920 Mad 546. This, it is true, was a partition case, but the same principle has been given effect to in a suit for rendition of partnership accounts. See Tommenidi Adeyya v. Chilukuri Venkatarayudu AIR 1914 Mad 369. The same course of procedure has been adopted by the Calcutta High Court in a case of partnership accounts in the decision of Brojendra Kumar Das v. Gobinda Mohan Das AIR 1916 Cal 80. The lower Courts, therefore, appear to us to have adopted the right procedure, and the appellant's appeal must fail.

2. There is one ground of objection common to both the cross-objections. It is that the lower appellate Court has wrongly assessed as the price of 100 bags of salt sold by the plaintiff, on the 15th April 1920, at the rate of Rs. 2-8-0 per bag,

whereas the first Court had assessed the rate at Rs. 6 per bag. The first Court held that one Qabul Singh had agreed to purchase some salt at Rs. 11-8-0 per bag and these 100 bags were tendered to him by the plaintiff but refused acceptance on the ground that the salt was of a wrong description. Ultimately litigation ensued, and the bags were not sold until the litigation had terminated at a time when the price of salt had fallen considerably. The respondent's objection in the Courts below was that the plaintiff should have sold the salt immediately. Qabul Singh refused to accept it and not have waited until the termination of litigation with Qabul Singh. Both Courts have rejected this plea. They have held that the respondents were in a position to insist on the immediate sale of the salt, if they so desired, and that the plaintiff alone could not be made responsible for the delay.

3. The next point was at what price the salt should be held to have been disposed of on the 15th April 1920. The plaintiff produced an account-book which he supported by his oral evidence to show that the salt was actually sold at the rate of Rs. 2-8-0 per bag. The first Court on the report of the Commissioner held that the market price at that date was Rs. 6 per bag, and, consequently, it disbelieved the averment of the plaintiff that he had disposed of all the salt at the low price of Rs. 2-8-0 per bag.

4. The lower appellate Court has given no reason for holding to the contrary that the salt was actually disposed of at the rate of Rs. 2-8-0 per bag, but it has given a definite finding that this was the case.

5. In view of the fact that the account-books filed by the plaintiff and supported by his oral evidence were admissible in evidence on this matter, we are unable to say that the finding of the lower appellate Court on this question of fact was unsupported by evidence. Whatever view we take of the value of that evidence, it is a finding which must be accepted in second appeal.

6. In the cross-objection of the respondent, Parbhu Lal, yet one other point is raised. Both the lower Courts refused to hold that a certain sum of Rs. 1,800 admittedly lent by Parbhu Lal to Debi Chand, formed an item of the partnership and was to be credited to the partnership. They both held that the sum was a private advance to Debi Chand by Parbhu Lal and had nothing to do with the partnership.

7. The reasons given by the first Court for this finding were that the first purchase made by the partnership did not take place until a month later, and that the account-book of the plaintiff showed that Debi Chand, plaintiff, had paid in advance two months interest on the loan, which, it held, would not have been the case if the money had been lent by Parbhu Lal to the partnership and not to Debi Chand personally. The lower appellate Court seems to have endorsed these reasons. Neither of these reasons appear to be of much weight. There is no reason why a partnership should not date from the day when money is put into it by one of the partners as distinct from the date when the first purchase in the

market was made by the partnership. Again the first Court appears to be wrong in stating that the account-book showed interest on the loan paid in advance. The account-book merely mentions that the loan was to carry interest. It was Debi Chand in his evidence who deposed to interest being paid in advance. Whether, however, these reasons for the decision of the lower Courts on this question are good ones or not, we hold in appeal that we cannot interfere with the finding as to this item, and for the following reasons: This cross-objection was one of the grounds in the appeal preferred by the respondents in the lower appellate Court, and this ground was definitely rejected by the lower appellate Court. There is no appeal against this decree of rejection.

8. The present appeal is against the decree passed by the lower appellate Court on Debi Chand's appeal. In cross-objections the respondent is only entitled to take a cross-objection to the decree appealed against. That decree did not deal in any way with this particular item. We would refer to the language of Order 41, Rule 22 of the Code of Civil Procedure, which appears to us to be decisive. In view of the plain language of this section, we do not feel inclined to follow the decision recorded in *Hardhan Mahto Vs. Gokhul Mahto*, where it was held that a party, in circumstances not to be distinguished from the present case, could file cross-objections attacking the decree of the trial Court so far as it was against the decree of the (first) appellate Court. This decision appears to us to ignore the fact that a second appeal is an appeal from a decree of a lower appellate Court, and that a cross-objection in the second appeal must be to something decided by a particular decree of the lower appellate Court against which the other party has appealed. It cannot be a cross-objection to something decided by another decree even though that other decree and the decree appealed against arose out of a single decree of the trial Court. To hold otherwise besides being against the language of Order 41, Rule 22 of the CPC would involve the setting aside of a decree never appealed against in proceedings in appeal against a different decree. For the above reasons we dismiss this appeal and both the cross-objections with costs.

Kanhaiya Lal, J.

9. I concur in the order proposed.